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ALEXANDER L. STEVAS,
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NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

FRED A. QUENZER,
Petitioner,

v.

NOLA KATHLEEN QUENZER,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WYOMING

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QUESTIONS PRESENTED

1. May Wyoming refuse to give full faith and credit under Article IV, Section 1 of the United States Constitution to a Texas custody decree merely because Texas and Wyoming do not have substantially similar jurisdictional prerequisites in custody cases?

2. May Wyoming refuse to give full faith and credit to a Texas custody decree under the provisions of the Parental Kidnapping Prevention Act because Wyoming disagrees with the Texas court's fact findings on the child's residency when that issue was fully litigated in the Texas court?

3. May Wyoming assume in personam jurisdiction over a Texas resident whose only contact with Wyoming is seeking recognition in the Wyoming courts of a Texas custody decree under the Full Faith and Credit Clause of the United States Constitution and the Parental Kidnapping Prevention Act?

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OPINIONS BELOW

The opinion of the Supreme Court of Wyoming is reported at 653 P.2d 295 and appears in the Appendix. The order of the Wyoming Supreme Court denying a petition for rehearing is unreported and is reproduced in the Appendix. The order of the District Court of Teton County, Wyoming, Ninth Judicial District, dated March 2, 1982 is unreported and is reproduced in the Appendix. The order of the 309th Judicial District Court of Harris County, Texas dated January 21, 1981 is unreported and is reproduced in the Appendix.

JURISDICTION

The opinion of the Supreme Court of Wyoming was rendered October 29, 1982. The order of the Wyoming Supreme Court denying petitioner's motion for rehearing was entered November 17, 1982. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article IV, Section 1

Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

United States Code, Title 28, Section 1738A

The full text of this statute is appended to the opinion rendered by the Supreme Court of Wyoming.

Wyoming Statutes Revised, Section 20-5-109(b)

Unless required in the interest of the child and subject to W.S. 20-5-115(a), the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner without consent of the person entitled to custody has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the court in its discretion and subject to W.S. 20-5-115(a) may decline to exercise jurisdiction.

Wyoming Statutes Revised, Section 20-5-114

The courts of this state shall recognize and enforce an initial or modification decree of a court of another state

which had assumed jurisdiction under statutory provisions substantially in accordance with this act, or which was made under factual circumstances meeting the jurisdictional standards of the act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this act.

Wyoming Statutes Revised, Section 20-5-115(a)

If a court of another state has made a custody decree a court of this state shall not modify that decree unless it appears that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this act or has declined to assume jurisdiction to modify the decree and the court of this state has jurisdiction.

STATEMENT OF THE CASE

Fred and Nola Kathleen Quenzer were married on June 12, 1969 in Tokyo, Japan. Two days later the couple moved to Houston, Texas where the husband went into medical practice. On April 20, 1970, their daughter Megan was born in Houston. The Quenzers spent their entire married life in the Houston area. On December 22, 1975, the Quenzers were divorced in the Court of Domestic Relations Number Two of Harris County, Texas. Under the divorce decree, Mrs. Quenzer was awarded custody of Megan, Dr. Quenzer was granted weekend and summer visitation privileges, and Dr. Quenzer was ordered to pay child support and contractual alimony.

Immediately after the divorce, Mrs. Quenzer left Texas with Megan. They moved to Colorado, to Washington, and then settled in Oregon in September 1976. As a result Dr. Quenzer was unable to exercise his visitation rights and did not return the child at the end of the summer visitation period. Mrs. Quenzer successfully prosecuted a habeas corpus action in Texas to obtain Megan's return.

In August 1977 Dr. Quenzer petitioned a circuit court in Oregon to enforce the visitation provisions of the Texas decree. Mrs. Quenzer filed a cross-petition seeking modification of the Texas decree and arrearages in child and spousal support payments. Dr. Quenzer then filed a motion for a change of custody. On July 7, 1978, the Oregon trial court continued custody with the mother and granted the mother a judgment for arrearages in support payments. The father did not appeal the custody determination but did appeal the money judgment. That judgment was affirmed by the Oregon Court of Appeals on September 4, 1979.

During the summer of 1979, Megan and Mrs. Quenzer traveled to Hawaii. In August Mrs. Quenzer married Jerry Sherrard. In September 1979, the three moved to Dillingham, Alaska, and later, in January, 1980, to Aleknagnik, Alaska. In June 1980, Megan went to visit her father in Texas for the prescribed summer visitation period. During the visit, the mother and Mr. Sherrard left Alaska for a visit to Wyoming. On July 8, 1980, during the prescribed summer visitation period, Dr. Quenzer filed a motion to modify in the 309th District Court of Harris County, Texas, Judge Alvin Zimmerman presiding, seeking a change of custody. Process was served on the mother in Oregon where she was visiting en route to Wyoming.

Mrs. Quenzer attempted to appear specially in the motion to modify proceeding. The mother also instituted a separate habeas corpus action in Judge Zimmerman's court seeking a return of the child pursuant to the Oregon decree. On August 8 and 15, 1980, Judge Zimmerman conducted the habeas corpus hearing. The Court heard the testimony of the mother, the father, the child, a school principal who had tested Megan, two psychiatrists and an

investigator who had been employed by the father to locate the child. The testimony focused on the child's living conditions with the mother and the mother's whereabouts since the divorce. Finding no immediate danger to the child, Judge Zimmerman granted the mother's petition for habeas corpus and returned the child to her mother's custody. Mrs. Quenzer then left Texas with Megan on August 16, 1980.

On October 15, 1980, Judge Zimmerman conducted a hearing on Mrs. Quenzer's motion for special appearance. At this hearing both Dr. Quenzer and Mrs. Quenzer were represented by counsel. Judge Zimmerman denied Mrs. Quenzer's special apearance. Dr. Quenzer's motion to modify was set for trial January 12, 1981. On that date Mrs. Quenzer was not present but her attorney was and participated throughout the trial. During that hearing, Judge Zimmerman heard the testimony of two psychiatrists retained by Dr. Quenzer, a school principal, Dr. Quenzer, Dr. Quenzer's second wife, a court-appointed psychologist, and a social worker appointed by the Court on motion of Mrs. Quenzer. Judge Zimmerman also considered the report of a Houston attorney whom Judge Zimmerman had appointed to go to Jackson, Wyoming to investigate the child's living conditions with Mrs. Quenzer. Judge Zimmerman also conferred by telephone with a psychologist in Wyoming who had examined Megan at Mrs. Quenzer's request. Judge Zimmerman also made a part of the record the testimony Megan had given in August 1980.

At the conclusion of the trial Judge Zimmerman ruled that the prior Texas and Oregon decrees should be modified and that the father should be awarded custody because changes in circumstances since the Oregon decree would make continued custody with the mother injurious

to the child's welfare. Judge Zimmerman also ordered Mrs. Quenzer to surrender possession of Megan to Dr. Quenzer by January 26. Judge Zimmerman found jurisdiction in the Texas courts to make these rulings in the following key passage of his modification order:

> "Respondent filed a Special Appearance. The Court having considered the pleadings, testimony of record, and all other relevant matters found it had jurisdiction and denied the Special Appearance. The Court further finds that at the time of the commencement of this suit, NOLA KATHLEEN was not a continuous domiciliary or resident of any state for six months preceding the filing of this action; that MEGEN KATHLEEN QUENZER was born on April 20, 1970 in Houston, Harris County, Texas; that the parties, NOLA KATHLEEN and FRED AUGUST QUENZER were granted a divorce in Houston, Harris County, Texas on the 22nd day of December, 1975 under cause number 1,035,983 as filed in the Court of Domestic Relations Number Two, Harris County, Texas captioned 'In the matter of the marriage of: FRED AUGUST QUENZER JR. and NOLA KATHLEEN QUENZER and in the interest of MEGEN ELIZABETH QUENZER'; that Texas was the last matrimonial Domicile of NOLA KATHLEEN and FRED AUGUST QUENZER; that NOLA KATHLEEN has been a transient for at least two years proceeding the filing of this cause; that no other court had or has continuing jurisdiction of this suit or the child, MEGEN KATHLEEN QUENZER, the subject of this suit. The Court finds it has jurisdiction of the child MEGAN KATHLEEN QUENZER, and that this Court is the most convenient forum to determine the best interest of the child MEGEN KATHLEEN QUENZER."

Judge Zimmerman's order was signed January 21, 1981. Mrs. Quenzer did not surrender the child on January 26. She did not appeal Judge Zimmerman's ruling. Instead, on February 23, 1981, while in contempt of the Texas order, she filed a complaint in the District Court of Teton County, Wyoming, Ninth Judicial District. Mrs. Quenzer's complaint and a later amended one *did not* allege that she should be awarded custody of Megan based on a change of circumstances that had arisen since the Texas order of modification. This would hardly be likely since the Texas decree had only been final for three days at that time. Rather, she alleged that the Wyoming courts were not bound to recognize the Texas order because Texas law did not substantially conform to the Wyoming enactment of the Uniform Child Custody Jurisdiction Act (UCCJA). The mother did ask the Wyoming court to recognize the 1978 Oregon decree and thereby award her custody. She also sought injunctive relief against the father, a revision of visitation provisions of the Oregon decree, and a judgment against Dr. Quenzer for arrearages in spousal and child support, and for attorney's fees.

Dr. Quenzer was served with Mrs. Quenzer's complaint in Houston. He proceeded to file a motion to dismiss the Wyoming action. Dr. Quenzer challenged Wyoming's jurisdiction of him personally and of the subject matter. His motion asked the Wyoming District Court to give full faith and credit to the January 12, 1981 Texas order, to recognize and enforce the Texas order, to recognize Texas as the more convenient forum, and to communicate with Judge Zimmerman. The District Court denied the father's motion, ruled that Wyoming did have jurisdiction, and ordered Dr. Quenzer to answer the com-

plaint. Rather than filing an answer, Dr. Quenzer petitioned the Wyoming Supreme Court for a writ of habeas corpus and a writ of prohibition. The petitions alleged that under the Full Faith and Credit Clause in Article IV, Section 1 of the United States Constitution, the Parental Kidnapping Prevention Act of 1980, 28 U.S.C. § 1738A (PKPA), and the child custody laws of Wyoming, the Wyoming District Court must recognize the Texas order and should not assume jurisdiction of the case or proceed further. These petitions also sought a return of the child under the Texas decree. On August 12, 1981 the Wyoming Supreme Court denied the writ of habeas corpus and the writ of prohibition by holding that an appeal from an adverse judgment would be an adequate remedy for Dr. Quenzer to pursue his contentions.

In response to this ruling of the Wyoming Supreme Court, Dr. Quenzer filed a motion in the District Court on September 15, 1981 asking that a default judgment be entered against him so that he could appeal the issues of in personam jurisdiction and jurisdiction of the subject matter under state, federal and constitutional law. On October 8, 1981, the District Court denied this motion and ruled that Dr. Quenzer had entered a general appearance by his "requests for affirmative relief."

On March 2, 1982, the District Court in Wyoming entered its final order. Without so much as acknowledging that the Texas court had given custody to the father, the District Court held that Texas did not have jurisdiction to enter any modification of custody decree. Accordingly, the District Court ruled that it need not pass on any questions of full faith and credit or of federal law. The Court gave custody to the mother and denied the father visitation unless certain undefined safeguards were

established. The District Court also found that it had in personam jurisdiction over the father and entered judgment against him for arrearages in child support, medical payments, alimony, and attorney's fees. The father appealed the entire judgment to the Wyoming Supreme Court.

Contrary to the findings of the Wyoming District Court, the Wyoming Supreme Court held that Texas did indeed have jurisdiction under Texas law to enter the order awarding the father custody and that Judge Zimmerman's overruling of the mother's special appearance should not be disturbed. Nonetheless, the Wyoming Supreme Court affirmed the remainder of the District Court ruling on October 29, 1982. The decision of the Wyoming Supreme Court rests on three major premises relevant here:

1. Wyoming need not recognize the Texas custody determination under the Full Faith and Credit Clause of the United States Constitution because Texas did not assume jurisdiction under prerequisites substantially similar to those of Wyoming.

2. Wyoming need not recognize the Texas custody determination under PKPA because the Texas order was not made consistently with the provisions of the Act as required by 28 U.S.C. § 1738A(c).

3. Wyoming has in personam jurisdiction over Dr. Q nzer because his actions in the Wyoming courts had gone beyond a mere challenge to Wyoming's jurisdiction and had constituted a general appearance. Thus, the money judgment against him was proper.

Dr. Quenzer petitioned the Wyoming Supreme Court for rehearing on November 12, 1982; however, rehearing was denied November 17, 1982.

REASONS FOR GRANTING THE WRIT

I.

THE DECISION BELOW IS IN CONFLICT WITH FULL FAITH AND CREDIT CLAUSE OF THE UNITED STATES CONSTITUTION. AS A RESULT, TWO DIFFERENT STATE COURTS HAVE REACHED CONFLICTING JUDGMENTS AS TO WHICH PARENT SHOULD HAVE CUSTODY OF THEIR MINOR CHILD.

The Wyoming Supreme Court rejected Dr. Quenzer's claim of full faith and credit under the United States Constitution because, in its view, Texas and Wyoming have established different jurisdictional prerequisites for a court to entertain an action for a change of custody. Sections 20-5-114 and 20-5-115(a), Wyoming Statutes Revised (1977) are modeled after Sections 13 and 14 of the UCCJA. Sections 20-5-114 and 20-5-115(a) basically require Wyoming courts to recognize, enforce, and not modify a custody decree of another state only if the other state assumed jurisdiction under standards and factual circumstances substantially in accordance with Wyoming law. "Consequently, if the issue in this case were confined to the enforcement of the Texas order it well might be that the doctrine of res judicata, combined with the provisions of our Wyoming law and the Parental Kidnapping Prevention Act, would require the recognition and enforcement of the Texas decree." 653 P.2d at 303. But the Wyoming Supreme Court observed that the UCCJA as adopted by Wyoming does not allow a Wyoming court to consider a modification of custody suit if the petitioning non-custodial parent retains physical

possession of the child beyond the time prescribed for visitation in the custody decree of another state. See Section 20-5-109(b), Wyoming Statutes Revised (1977), which is modeled after Section 8(b) of the UCCJA. The Wyoming Supreme Court noted that Dr. Quenzer had filed his motion to modify in Texas during a prescribed visitation period with Megan but had retained possession of her beyond that set forth in the Oregon decree. So under § 20-5-109(b), the father would not have been permitted under Wyoming law to pursue a change of custody action. Texas, however, has not adopted the UCCJA and does not have a statutory provision similar to Section 8(b) of the UCCJA. Thus, the Wyoming Supreme Court held that Wyoming courts need not enforce the Texas decree because the Texas decree was not entered under jurisdictional standards similar to those of Wyoming.

The Wyoming Supreme Court here ignored the Full Faith and Credit Clause of Article IV, Section 1 of the United States Constitution in ruling that Wyoming may disregard a Texas custody decree simply because Texas does not contain identical jurisdictional prerequisites to states which have adopted the UCCJA. The Wyoming Supreme Court cited no cases in support of its proposition that one state must give full faith and credit to another state's custody decree if and only if the two states have substantially equivalent procedural requirements. And the lower court's decision stands in direct opposition to the pronouncement of this Court in *Williams v. North Carolina*, 317 U.S. 287 (1942). There this Court held that under the Full Faith and Credit Clause, North Carolina could not refuse recognition of a Nevada divorce decree

simply because Nevada's prerequisites for divorce would offend the policy of North Carolina. There should not be a different rule for custody than for divorce.

If the decision below is permitted to stand, no UCCJA state would have to give full faith and credit to the custody decree of any non-UCCJA jurisdiction. See e.g., *Eicke v. Eicke*, 339 So.2d 1231 (La. Ct. App. 1981), *cert. denied*, 406 So.2d 607 (La. 1981), *cert. granted*, ___U.S.____, 102 S.Ct. 2232 (1982), *cert. dismissed*, ____U.S.____ [51 U.S.L.W. 3532, January 17, 1983]. But the issue is broader than a conflict between states which have adopted a version of the UCCJA and states which have not. Even in situations in which both states have purported to adopt the UCCJA, some states have refused to enforce other states' custody decrees because the second state believed that the first state had not satisfied the second state's procedural requirements. See e.g., *Williams v. Zacher*, 581 P.2d 91 (Ore. Ct. App. 1978) (Oregon refusal to enforce Colorado decree); *Baird v. Baird*, 374 So.2d 60 (Fla. Dist. Ct. App. 1979) (Florida refusal to enforce Arizona decree); *Webb v. Webb*, 245 Ga. 650, 266 S.E.2d 463 (1980), *cert. dismissed*, 451 U.S. 493 (1981) (Georgia refusal to enforce Florida decree). As long as "differing jurisdictional prerequisites" is the standard to deny full faith and credit, any state can devise a way not to recognize custody decrees of any other state. The result would be no full faith and credit in custody cases and total havoc for family law throughout the country.

II.

THE DECISION BELOW SERIOUSLY UNDERMINES THE EFFECTIVENESS OF THE PARENTAL KIDNAPPING PREVENTION ACT.

Congress passed the Parental Kidnapping Prevention Act (PKPA) in an effort to bring some stability to the law of interstate child custody disputes. Section 8 of PKPA requires that each state enforce and give full faith and credit to all custody determinations made by other states "consistently with the provisions of this section." 28 U.S.C. § 1738A(a). The Wyoming Supreme Court recognized as much but held that the Texas decree was not made "consistent with the provisions of this section" as that term is defined in 28 U.S.C. § 1738A(c). The Wyoming Supreme Court found that the Texas custody determination satisfied 28 U.S.C. § 1738A(c)(1) because the Wyoming Supreme Court acknowledged that Texas had jurisdiction under Texas law. But the Wyoming Supreme Court determined that the Texas ruling was not made consistently with 28 U.S.C. § 1738A(c)(2). The basis for its holding on this point is that when the Texas proceeding commenced, Alaska was the child's "home state" as defined in 28 U.S.C. § 1738A(b)(4) even though in pleadings filed in both Texas and Wyoming, Mrs. Quenzer alleged that prior to July, 1980 the child's home jurisdiction was Oregon, not Alaska. Thus, reasoned the court below, at the time Dr. Quenzer filed his motion for modification, only Alaska would have been able to enter a decree which Wyoming would then have to enforce under PKPA.

Judge Zimmerman found, however, that the mother had not been a continuous resident or domiciliary of any

state for the six months preceding the filing of Dr. Quenzer's action in July 1980 and that the mother had been a transient for the two years prior to the commencement of the Texas proceeding. These periods encompassed the time that the mother and child were in Alaska. Thus Judge Zimmerman determined that the child had no "home state," Alaska or otherwise. He also found that no other state had jurisdiction over her. These findings satisfy 28 U.S.C. § 1738A(c)(2)(B)(i). He also found that the child was born in Texas, that the parents were divorced in Texas, that all parties had lived in Texas during the marriage, and that the evidence showed a change of custody would be in the child's best interest. These findings satisfy 28 U.S.C. § 1738A(c)(2)(B)(ii).

Judge Zimmerman's findings that the mother was a transient, that the child had no home state, and that it would be in the best interest of the child for Texas to exercise jurisdiction over the child satisfy 28 U.S.C. § 1738A(c)(2)(D). So under Judge Zimmerman's fact findings, the Texas custody determination conformed to both 28 U.S.C. § 1738A(c)(2)(B) and 28 U.S.C. § 1738A(c)(2)(D) and under PKPA must be recognized by Wyoming. The Wyoming Supreme Court, however, evaded PKPA by simply refusing to accept Judge Zimmerman's fact findings. The Wyoming Supreme Court held that the child had been a resident of Alaska for at least six months prior to July 1980 whereas Judge Zimmerman had determined just the opposite.

A Texas court found the facts necessary for a custody determination consistent with PKPA. The Wyoming Supreme Court said that the Texas court had determined those facts incorrectly. This action of the Wyoming

Supreme Court could seriously impair the effectiveness of PKPA. If one state can go behind the facts underlying another state's custody order, then PKPA provides no assurance that one state's custody decree will be honored in any other state. PKPA was intended to limit the number of courts which can hear custody disputes. The decision below does just the reverse. PKPA can be a nullity if Wyoming can disregard a Texas decree simply because Wyoming disagrees with the fact findings of a Texas court after those facts were fully litigated in Texas.

The effectiveness of PKPA and the recognition of custody decrees in foreign states could also be jeopardized by the Wyoming Supreme Court's finding of in personam jurisdiction over Dr. Quenzer. *Kulko v. Superior Court*, 436 U.S. 84 (1978) was this Court's most recent decision concerning in personam jurisdiction in an interstate marital dispute. *Kulko* held that the California courts did not have jurisdiction over a New York father in the mother's action for child support when the father's only contacts with California consisted of allowing his children to live with their mother in California for a longer period than that prescribed in the separation agreement. The Court reached this conclusion by applying the often cited standard of *International Shoe Company v. Washington*, 326 U.S. 310, 316 (1945) and by determining that it would be offensive to "traditional notions of fair play and substantial justice" to subject Mr. Kulko to California jurisdiction on the basis of his contacts with that state.

Prior to the commencement of the Wyoming litigation here, Dr. Quenzer had fewer contacts with Wyoming than Mr. Kulko did with California. In fact, it is undisputed that prior to the filing of Mrs. Quenzer's complaint on

February 23, 1981, Dr. Quenzer had absolutely no contacts whatsoever with the State of Wyoming. Yet the Wyoming Supreme Court exercised in personam jurisdiction over Dr. Quenzer nonetheless and affirmed a money judgment against him.

The basis for this holding was that Dr. Quenzer had done more than merely ask the Wyoming courts to dismiss Mrs. Quenzer's complaint for lack of jurisdiction. Rather, Dr. Quenzer had taken "affirmative action" in the Wyoming courts and thereby converted his special appearance into a general one. Specifically, Dr. Quenzer asked the District Court to give full faith and credit to the Texas order and to recognize Texas as the more convenient forum. Furthermore, Dr. Quenzer applied for writs of habeas corpus and prohibition in the Wyoming Supreme Court not only challenging the lower court's jurisdiction but also seeking recognition of the Texas order under Constitution and under PKPA. Finally after the Wyoming Supreme Court denied these applications for extraordinary relief, Dr. Quenzer then asked the District Court to enter a default judgment against him so that he could appeal the jurisdictional, PKPA and full faith and credit issues to the Wyoming Supreme Court. In the view of the Wyoming Supreme Court, by these actions Dr. Quenzer was seeking the protection of the Wyoming courts; therefore, it would be fair to find jurisdiction over him personally in Wyoming.

All of Dr. Quenzer's "affirmative action" in the Wyoming courts had one central theme—to ask for recognition and enforcement of the Texas order under the Full Faith and Credit Clause of the Constitution and under the Congressional effort to implement that clause through PKPA. The issue, in the framework of *Kulko*, is whether it

offends "notions of fair play and substantial justice" for a state to impose in personam jurisdiction over an out-of-state parent who enters a foreign state to seek enforcement of a custody decree. This is a question that has never been addressed by this Court and could have significant implications for the effectiveness of PKPA. If a parent must submit himself to the in personam jurisdiction of a foreign court when seeking enforcement of a custody decree, then many parents will be deterred from vindicating custody determinations under PKPA. Such a state of affirs would encourage the kidnapping that PKPA was designed to prevent.

CONCLUSION

For these reasons, this Court should grant a writ of certiorari to review the decision of the Supreme Court of Wyoming.

Respectfully submitted,

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APPENDIX A

Fred A. QUENZER, Appellant
(Defendant),

v.

Nola Kathleen (QUENZER),
Appellee (Plaintiff).

No. 5680.

Supreme Court of Wyoming.

Oct. 29, 1982.

Rehearing Denied Nov. 17, 1982.

Donald J. Sullivan, Cheyenne, for appellant.

W.H.C. Venable, Jackson, and Lea Jacobs, Jackson, for appellee.

Before ROSE, C. J., and RAPER, THOMAS, ROONEY and BROWN, JJ.

THOMAS, Justice.

The task confronting our court in this case is that of reconciling, in the context of the power to enter a judgment modifying a child-custody decree, the laws of the State of Texas, the State of Wyoming, and the United States of America. The question of custody of the parties' daughter is before the courts for the fourth time in seven years with each proceeding except this one being instituted by the father. A district court in Texas entered an Order of Modification in Suit Affecting Parent-Child Relationship, modifying the child-custody provisions of an Order entered in a circuit court of the State of Oregon essentially by awarding custody of the child to the father. The circuit court in Oregon had entered a judgment essentially confirming the child-custody provisions, but modifying the visitation provisions, of a Decree of Divorce which had been entered by the Court of Domestic Relations in Texas, and which had awarded primary custody of the child to the mother. Thereafter, the district court in Wyoming entered its Order modifying the Texas modification order by restoring primary custody to the mother. The district court in Wyoming, while denigrating the authority of the Texas court to enter a modification order, essentially relied upon its own authority to modify the provisions relating to the custody of the child based upon a change in circumstances. This appeal is by the father from the Order entered by the district court in Wyoming, which not only modified the custody provisions of the order

entered by the Texas district court, but also imposed personal judgments upon the father. Having satisfied ourselves of the jurisdiction of the district court in Wyoming to enter its Order, we shall affirm the district court.

The appellant, Fred August Quenzer, Jr., and the appellee, Nola Kathleen Quenzer (now Sharrard), were divorced in Texas in 1975. Primary custody of the parties' daughter was awarded to the mother pursuant to the Decree of Divorce which followed the provisions of a Property Settlement Agreement previously entered into by the parties. Not long after the divorce the mother removed herself from Texas with the result that the father could not exercise weekend visitation rights as provided for in the Decree of Divorce. The response of the father was to refuse to return the child after a visit in Texas in June of 1976, and the mother had to return to Texas and prosecute a habeas corpus proceeding to secure the daughter's return to her custody. She was successful in that endeavor.

In August of 1977 the father petitioned the circuit court in Oregon to enforce the visitation provisions of the Texas decree in accordance with Oregon's adoption of the Uniform Child Custody Jurisdiction Act. A cross-petition by the mother sought modification of the Texas decree and also arrearages in child and spousal support payments, and an increase in the amount of monthly child support. Other relief also was requested. The father then filed a motion for a change in custody of the daughter. In so doing the father conceded that the Texas court did not have continuing jurisdiction to determine custody issues. Essentially the Oregon decree continued custody in the mother; held the mother in contempt for failing to com-

ply with the visitation provisions of the Texas decree; modified the visitation provisions of the Texas decree so as to require the father to post a $1000 bond to guarantee the return of the daughter at the conclusion of court-ordered visitation and changing the times and duration of the father's visitation privileges; granted judgment for arrearages in child and spousal support against the father; found the father in contempt for willful failure to comply with the child and spousal support provisions of the decree; and denied the mother's motions for increased child support and payment of attorneys fees and costs. Although appealed, that judgment was affirmed by the Oregon Court of Appeals.

Following the entry of the order in the circuit court in Oregon, the mother moved to Eugene, Oregon, and then spent the summer of 1979 traveling in Hawaii, staying there with friends. In August of 1979 the mother married her present husband and the mother, daughter and the stepfather moved to Dillingham, Alaska, where they remained until January of 1980. From Dillingham they moved to a smaller native village of Aleknagnik, where they remained until June of 1980. In June of 1980 the daughter was sent to visit in Texas. The father was entitled to custody for a six-week period starting on the second Sunday of June of each year. During the period of this visit the mother and her husband moved from Alaska to Teton County, Wyoming, where they intended to establish a permanent residence. On July 8, 1980, which was less than a week before the scheduled visitation in Texas was to end, the father filed a motion in the Texas district court, seeking a modification in custody of the child. Process was served upon the mother in Eugene,

Oregon, where she was visiting prior to returning to Wyoming.

Thereafter the mother instituted a separate habeas corpus proceeding in the Texas court seeking enforcement of the Oregon decree returning the child to her custody. The return to her custody was ordered by the Texas court, and on August 16, 1980, the mother and daughter left Texas, and since that time they have resided in Wyoming. The order formalizing the judgment of the court was entered on October 8, 1980. In the meantime the modification proceeding had been held in abeyance pending a determination of the status of the mother, who had attempted to appear specially. The Texas court, by the same judge who had heard the habeas corpus proceeding, entered an order denying the mother's special appearance and ordering the case to proceed to trial on the merits. Thereafter, in January of 1981, trial was held with respect to the proceeding seeking modification of custody. On January 12, 1981, an Order of Modification in Suit Affecting Parent-Child Relationship was entered in Texas in which the court held that custody should be given to the father with visitation rights to the mother. January 26, 1981, was specified as the date for transferring possession of the child, and the Texas court did enter findings that it had jurisdiction and that the mother had not been a continuous domiciliary or resident of any state for six months preceding the filing of this action. It further found that no other court had or has continuing jurisdiction of the suit or of the daughter and that it had jurisdiction of the child because it was the most convenient forum to determine the best interest of the child.

The proceeding in Wyoming was commenced on February 23, 1981. The Order in the Wyoming proceeding was

signed on February 22, 1982, and entered on March 2, 1982. The Wyoming court found that it had jurisdiction under the Wyoming version of the Uniform Child Custody Jurisdiction Act; that the mother was the proper person to have custody of the child; and that the circumstances before the court showed that any orders of any court in the past should be modified, because of a change in circumstances, to give the mother custody of the child. While critical of the Texas proceeding, the Wyoming district court premised its authority upon the existence of jurisdiction pursuant to Wyoming statute, and it did proceed to modify the Texas modification order by restoring permanent custody to the mother; denying visitation rights in the father "at the present time unless substantial safeguards are erected in that regard"; requiring the payment of past due child support and past due spousal support; and ordering that the father should pay for attorneys fees and costs in connection with litigation of the matter. The father has appealed from this order.

The father, in his brief, states the issues in this appeal as follows:

> "1. Whether the trial court erred in exercising jurisdiction in the child custody modification proceeding.
>
> "2. Whether the trial court erred in denying full faith and credit to the existing Texas custody decree.
>
> "3. Whether the trial court erred in exercising *in personam* jurisdiction over Appellant.
>
> "4. Whether the trial court denied Appellant due process of law and abused its discretion."

No separate statement of the issues is made on the part of the mother, who contended herself with addressing the issues as presented by the appellant.

We shall proceed to deal initially with the second issue asserted by the father. The father urges in support of his position the requirements of the Full Faith and Credit Clause of the Constitution of the United States of America. The Constitution provides in Art. IV, § 1, as follows:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Cases from the Supreme Court of the United States, however, have taught that the finality of a custody determination under the Full Faith and Credit Clause depends on whether the court originally making the custody determination retained the power under its own laws subsequently to modify its original order. In *People of State of New York ex rel. Halvey v. Halvey*, 330 U.S. 610, 614, 67 S.Ct. 903, 905, 91 L.Ed. 1133 (1947), the court stated:

> "So far as the Full Faith and Credit Clause is concerned, what Florida [the original divorce jurisdiction] could do in modifying the decree, New York [the forum state] may do. * * * [T]he State of the forum has at least as much leeway to disregard the judgment, to qualify it, or to depart from it as does the State where it was rendered."

This holding has been reiterated in two subsequent child-custody decisions. *Kovacs v. Brewer*, 356 U.S. 604, 78 S.Ct. 963, 2 L.Ed.2d 1008 (1958); *Ford v. Ford*, 371

U.S. 187, 83 S.Ct. 273, 9 L.Ed.2d 240 (1962). See also *Linch v. Harden*, 26 Wyo. 47, 176 P. 156 (1918).

The holding of these cases is that if res judicicata does not act as a bar to the modification of a custody decree under the law of the state exercising original jurisdiction, then the forum state is not precluded from exercising its own jurisdiction to modify the provisions of the decree relating to child custody. In the instant case, Texas, by statute and judicial interpretation, allows the modification of a custody decree upon a showing of a substantial change in circumstances and that the modification will be in the best interest of the child. Tex. Fam. Code Ann., tit. 2, § 14.08 (Vernon 1975); *Perry v. Ponder*, Tex. Civ. App., 604 S.W.2d 306 (1980). Under the rule pronounced in *People of State of New York ex rel. Halvey*, supra, it follows that upon such a showing Wyoming can exercise its own jurisdiction to modify the custody determination made by the court in Texas.

The father argues earnestly, however, that the Parental Kidnaping Prevention Act of 1980, Pub.L. 96-611, 94 Stat. 3569 (1980), substantially changes the rule announced in the cases cited above, and forecloses the Wyoming court from modifying the modification decree entered by the Texas court. As codified at 28 U.S.C.A. § 1738A, the pertinent provisions of this Act, found in § 8(a), are attached as Appendix A to this opinion.

This legislation, if applicable, must be afforded primary consideration under the Supremacy Clauses of our federal and state constitutions. Constitution of the United States, Art. VI, Cl. 2; Constitution of the State of Wyoming, Art. 1, § 37. By this statute Congress has provided for the effect to be given to the judicial proceedings in the state

originally exercising jurisdiction, and thus has defined what full faith and credit requires in such instances.[1]

Any child-custody determination made consistently with the provisions of the Parental Kidnaping Prevention Act is required to be enforced according to its terms by the courts of every other state (28 U.S.C.A. § 1738A), and the authorities of another state are not permitted to modify except as provided in subsection (f) of 28 U.S. C.A. § 1738A such a child-custody determination. Subsection (f), which is referred to, provides as follows:

> "(f) A court of a State may modify a determination of the custody of the same child made by a court of another state, if—
>
> "(1) it has jurisdiction to make a child custody determination; and
>
> "(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination."

The two-pronged test which must be met is: (1) Wyoming must have jurisdiction under its own laws to make a child-custody determination; and (2) Texas must no longer have jurisdiction or must have declined to exercise jurisdiction. *Pierce v. Pierce*, Mont., 640 P.2d 899

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1. It would appear that this legislation was intended to supplement existing state legislation such as the Uniform Child Custody Jurisdiction Act to promote interstate judicial cooperation and communication, facilitate the enforcement of custody and visitation decrees of sister states, discourage interstate controversies over child custody, prevent jurisdictional competition and conflicts between state courts, and to deter parental kidnapping and forum shopping. See § 7(c), Pub. L. 96-611, 94 Stat. 3569 (1980). See also comment, The Uniform Child Custody Jurisdiction Act And Parental Kidnapping Prevention Act: Dual Response to Interstate Child Custody Problems, 39 Wash. & Lee L. Rev. 149 (1982).

(1982); *State ex rel. Valles v. Brown*, 97 N.M. 327, 639 P.2d 1181 (1981); *Leslie L.F. v. Constance F.*, 110 Misc. 2d 86, 441 N.Y.S.2d 911 (1981).

There is, however, a threshold test which must be applied before the two-part test must be met. The modification order in Texas must have been made consistently with the provisions of the Parental Kidnaping Prevention Act. Subsection (c) of the Parental Kidnaping Prevention Act provides as follows:

> "(c) A child custody determination made by a court of a State is consistent with the provisions of this section only if—
>
> "(1) such court has jurisdiction under the law of such State; and
>
> "(2) one of the following conditions is met:
>
> "(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;
>
> "(B)(i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

"(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse;

"(D)(i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

"(E) The court has continuing jurisdiction pursuant to subsection (d) of this section."

The statutory basis for the exercise of jurisdiction by the Texas court is Tex. Fam. Code Ann., tit. 2, § 11.045 (Vernon Cum. Supp. 1982), which provides:

"(a) A court has original jurisdiction of a suit affecting the parent-child relationship, whether or not the child is physically present in the state, only if one of the following conditions is met:

"(1) this state:

"(A) is the principal residence of the child at the time the proceeding is commenced; or

"(B) was the principal residence of the child at any time during the six-month period before the proceeding was commenced, and a parent or person acting as a parent resides in this state at the time the proceeding is commenced; or

"(2) it is in the best interest of the child that a court of this state assume jurisdiction because:

"(A) the child and the child's parents or the child and at least one contestant have a significant connec-

tion with this state and there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

"(B) the child is physically present in this state and there is a serious immediate question concerning the welfare of the child; or

"(C) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with this section, or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine issues concerning the child.

"(b) The physical presence in this state of the child or of the child and one of the contestants is alone insufficient to confer jurisdiction to the court to make a determination under this subtitle."

The father argues that the Texas court was exercising jurisdiction under subsection (a)(2)(A) of this statute. We agree that this was so, and we conclude that the initial requirement of a child-custody determination made consistently with the provisions of the Parental Kidnaping Prevention Act is satisfied.

The Texas determination, however, was not made consistently with the second requirement of the Parental Kidnaping Prevention Act, in that its exercise of jurisdiction did not fit any of the conditions contained in 28 U.S.C.A. § 1738A(c)(2). Obviously Texas was not the home state of the child under subsection (A) of that provision. The father cannot rely upon subsection (B) of that provision because the daughter had been living in Alaska for at least six consecutive months immediately preceding the time she went to visit the father, and Alaska

would be the home state of the child as defined in 28 U.S.C.A. § 1738A(b)(4). The Texas court therefore could not, and it did not, find that no other state would have jurisdiction under subparagraph (A) of 28 U.S.C.A. § 1738A(c)(2)(A). Subsections (C), (D), and (E) of the title similarly are not applicable, and we must conclude that the jurisdiction of the district court in Wyoming was not foreclosed by the provisions of the Parental Kidnaping Prevention Act because the modification order entered in the State of Texas was not a "custody determination made consistently with the provisions of this section by a court of another State."

Having concluded that neither the Full Faith and Credit Clause nor the provisions of the Parental Kidnaping Prevention Act foreclosed the exercise of jurisdiction by the district court in Wyoming, we still must consider whether the exercise of that jurisdiction was precluded under some provision of Wyoming law. Our conclusion with respect to this proposition will also dispose of the first issue urged by the father in his appeal. Section 20-5-104, W.S. 1977, is the provision governing the jurisdiction of Wyoming courts in child-custody proceedings, and it provides as follows:

> "(a) A court of this state competent to decide child custody matters has jurisdiction to make a child custody determination by initial decree or modification decree if:
>
> "(i) This state is the home state of the child at the time of commencement of the proceeding, or was the child's home state within six (6) months before commencement of the proceeding and the child is absent from the state because of his removal or retention by a person claiming his custody or for other reasons,

and a parent or person acting as parent continues to live in this state;

"(ii) It is the best interest of the child that a court of this state assume jurisdiction because the child and his parents, or the child and at least one (1) contestant, have a significant connection with the state and there is available in this state substantial evidence concerning the child's present or future care, protection, training and personal relationships;

"(iii) The child is physically present in this state and has been abandoned or if it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or

"(iv) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs [subdivisions] (i), (ii) or (iii) of this subsection, or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child and it is in the best interest of the child that this court assume jurisdiction.

"(b) Except under paragraphs [subdivisions] (a) (iii) and (iv) of this section, physical presence in this state of the child or of the child and one (1) of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

"(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody."

Both subsections (a)(i) and (a)(ii) in this instance justify the exercise of jurisdiction by the courts of the State of Wyoming. In § 20-5-103(a)(v), W.S. 1977, "Home state" is defined as follows:

> "* * * 'Home state' means the state in which the child immediately preceding the time involved has lived with his parents, a parent or a person acting as parent, for at least six (6) consecutive months, and in the case of a child less than six (6) months old the state in which the child has lived since birth with any of the persons mentioned. Periods of temporary absence of any of the names persons are counted as part of the six (6) month or other period; * * *"

The record is clear that the daughter had resided with her mother in Wyoming from the time of the conclusion of the habeas corpus proceeding in Texas until the comcencement of the Wyoming proceeding, which was more than six months. It is equally apparent that there did exist in this instance a significant connection with the State of Woming, and that there was available in this state substantial evidence concerning the child's present or future care, protection, training and personal relationships. Friends, neighbors, school personnel, and a professional psychologist were all present to assist the court in making determinations with respect to the best interest of the child. We note by contrast that the testimony in the Texas proceeding duplicated some of this testimony, and that the Texas witnesses appeared primarily as character witnesses for the father and his second wife. Any balanced comparison of these factors results in a clear preference for the State of Wyoming as the appropriate forum. The district court made its determination, after weighing the factors identified in *State ex rel. Klopotek v. District Court of Sheridan County, Wyo.*, 621 P.2d 223, (1980), that it was in the best interest of the child that it exercise its jurisdiction. The evidence present in the record sustains this determination,

and in the absence of some other inhibiting factor or prohibition the district court had jurisdiction over this matter under Wyoming law.

The father, however, points to the provisions of § 20-5-107(a), W.S. 1977, and urges that this section prohibits the exercise of jurisdiction in Wyoming. Section 20-5-107(a), W.S. 1977, provides:

> "(a) A court of this state shall not exercise its jurisdiction under this act if at the time of filing the petition a proceeding concerning the custody of the same child was pending in a court of another state exercising jurisdiction substantially in conformity with this act, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons."

Again the record is clear that when this proceeding was commenced in the Wyoming district court the proceedings in the courts of Texas had been concluded, and become final there according to local law. Since there was no proceeding pending in Texas, § 20-5-107(a) did not interfere with the exercise of jurisdiction by the district court in Wyoming. We note in this regard that the father apparently has abandoned his claim that the district court abused its discretion by failing to decline jurisdiction as an inconvenient forum in favor of Texas under § 20-5-108, W.S. 1977.

Relying upon still another contention, the father argues that the district court committed error in asserting and exercising jurisdiction to determine child custody in the light of §§ 20-5-114 and 20-5-115(a), W.S. 1977. The provisions of those statutes read as follows:

"§ 20-5-114. Recognition and enforcement of initial or modification decree made by court of another state.

"The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this act, or which was made under factual circumstances meeting the jurisdictional standards of the act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this act."

"§ 20-5-115. Modifying custody decree made by court of another state.

"(a) If a court of another state has made a custody decree a court of this state shall not modify that decree unless it appears that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this act or has declined to assume jurisdiction to modify the decree, and the court of this state has jurisdiction."

The mother meets these contentions by asserting that the district court correctly refused to recognize and enforce the Texas order because the statutory provisions in Texas are not substantially in accordance with the Uniform Child Custody Jurisdiction Act, and she asserts that the factual circumstances were such that the jurisdictional standards of the Uniform Act were not met in Texas. See *Allison v. Superior Court of County of Los Angeles*, 99 Cal. App. 3d 993, 160 Cal. Rptr. 309 (1979). She points out that, while tit. 2, § 11.045(a)(2)(A), Tex. Fam. Code Ann. (Vernon 1975), facially is similar to § 20-5-104(a)(ii), W.S. 1977, the State of

Texas has no provision similar to § 20-5-109(b), W.S. 1977. This latter provision provides as follows:

> "(b) Unless required in the interest of the child and subject to W.S. 20-5-115(a) the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner without consent of the person entitled to custody has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the court in its discretion and subject to W.S. 20-5-115(a) may decline to exercise jurisdiction."

The record before us discloses that while the father filed his action for modification in Texas during the period that the daughter was visiting him pursuant to the provisions of the Oregon decree, his retention of custody beyond the time provided by the decree was wrongful and in derogation of the mother's rights. We agree with the mother that *State ex rel. Klopotek v. District Court of Sheridan County*, supra, teaches that a Wyoming court under these circumstances would not be permitted to exercise its jurisdiction to modify a custody decree.

It would appear from the circumstances that the policy of the State of Texas differs. Consequently, if the issue in this case were confined to the enforcement of the Texas order it well might be that the doctrine of res judicata, combined with the provisions of our Wyoming law and the Parental Kidnapping Prevention Act, would require the recognition and enforcement of the Texas decree. Contrary to the finding of the Wyoming district court,

the issue of the mother's general appearance in Texas probably was governed by the principle of res judicata. Still the availability of the jurisdiction of the district court to modify the provisions of the State order is not foreclosed. Unless the prohibition contained in § 20-5-115(a), W.S. 1977, is applicable, the district court in Wyoming had the power to act and enter its own order modifying the custody provisions upon a sufficient showing of a change in circumstances to warrant a different decree. *Salmeri v. Salmeri*, Wyo., 554 P.2d 1244 (1976); *Tanner v. Tanner*, Wyo., 482 P.2d 443 (1971); and *Leitner v. Lonabaugh*, Wyo., 402 P.2d 713 (1965).

We conclude that it is the duty of the Wyoming court to determine the applicability of § 20-5-115(a), W.S. 1977, i.e., to determine whether the Texas court at the time the jurisdiction of the Wyoming court was exercised had jurisdiction under jurisdictional prerequisites substantially in accordance with the Uniform Child Custody Jurisdiction Act or had declined to assume jurisdiction to modify the decree. *Leslie L.F. v. Constance F.*, supra. This determination, which must be made by the Wyoming court, is to be made not at the commencement of the Wyoming action, but rather at the time of the hearing on the matter in light of the evidence presented. *In re Marriage of Hobson*, 110 Cal. App. 3d 884, 168 Cal. Rptr. 345 (1980). Other courts which have construed this Uniform Child Custody Jurisdiction Act generally have applied a two-stage test in determining whether the local court had jurisdiction to modify a foreign custody determination. First the court must consider whether the court whose decree is sought to be modified no longer has jurisdiction under standards such as those set forth in § 20-5-104, W.S. 1977, and secondly it may consider

whether the court whose decree is sought to be modified has declined jurisdiction to modify its prior judgment. If either of these tests is met, then the forum state must determine whether it has jurisdiction under its own laws. *In re Marriage of Hobson*, supra; *In re Marriage of Mintle*, Iowa, 294 N.W.2d 564 (1980); *Application of Pierce*, Mont., 601 P.2d 1179 (1979); *Leslie L.F. v. Constance F.*, supra; and *Dragoo v. Dragoo*, 99 Wis. 2d 42, 298 N.W.2d 231 (1980).

On the date that the Wyoming court held its hearing the Texas court no longer had jurisdiction under standards which substantially comply with the Uniform Child Custody Jurisdiction Act. This test having been met, the Wyoming court was not foreclosed from exercising jurisdiction by the provisions of § 20-5-115(a), W.S. 1977. We justify this holding first by alluding to one of the general purposes of the Uniform Child Custody Jurisdiction Act set forth in § 20-5-102, W.S. 1977, as follows:

> "(a) The general purposes of this act are:
>
> * * *
>
> "(iii) To assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;"

We find in this statement of policy an explicit recognition that the paramount consideration of the best interest of

the child mandates that custody determinations be made in the forum having the best access to the relevant evidence. The Reporter for the Special Committee of the Commissioners on Uniform State Laws stated the proposition thusly:

> "* * * As a general proposition the state in which there is the best opportunity to investigate the facts is most qualified to take jurisdiction." Bodenheimer, The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws, 22 Vand. L. Rev. 1207, 1221 (1969).

In the Commissioner's Note following § 3 of the Uniform Child Custody Jurisdiction Act, it is stated that there "must be maximum rather than minimum contacts with the state." 9 U.L.A., Child Custody Jurisdiction Act, § 3, p. 124 (1979). Courts which have interpreted this provision similarly have held that by requiring optimal access to the relevant evidence the best interest of the child will be served. *In re Marriage of Weinstein*, 87 Ill. App. 2d 101, 42 Ill. Dec. 243, 408 N.E.2d 952 (1980); *Slidell v. Valentine*, Iowa, 298 N.W.2d 599 (1980); and *Leslie L.F. v. Constance F.*, supra. See also Moran, The Uniform Child Custody Jurisdiction Act: An Analysis of Its History, A Prediction of Its Future, 84 W. Va. L. Rev. 135, 146-147 (1981).

At the time that Wyoming exercised its jurisdiction in this matter it was the "home state" under the Uniform Child Custody Jurisdiction Act and § 20-5-104(a)(i), W.S. 1977. The potential basis for the assertion of jurisdiction in Texas is the Texas counterpart of § 20-5-104 (a)(ii), W.S. 1977. At the pertinent date the state which had the most significant connections with the child and

her mother was Wyoming. In February of 1982 the daughter had been present in Wyoming nearly eighteen months. She was attending local schools and receiving weekly counseling in Jackson, Wyoming, from a professional psychologist. Evidence of the mother's parental fitness and her relationship with the daughter was most accessible in Wyoming. Most importantly, however, the child's presence in this state gave the district court the best opportunity to gather evidence concerning the daughter's emotional and personal development, as well as furnishing to it the opportunity for the child to testify directly with respect to her early allegations in the Texas habeas corpus proceeding of drug use and mistreatment at the hands of her mother. She had earlier recanted that testimony by a letter to the Texas judge, and the Wyoming court had the opportunity to evaluate personally with the daughter the two versions of her prior testimony. The evidence available in Wyoming was relevant and substantial with respect to the issue of the best interest of the child. Under these criteria the Wyoming court properly exercised jurisdiction in the matter and entered its decree modifying the custody provisions of the Texas decree.

The third issue presented by the father is his argument that he entered and maintained in the district court in Teton County, Wyoming, a special appearance to contest both subject-matter jurisdiction and jurisdiction over his person. Pointing to his continuing status as a resident of Texas, he urges that service of process by the sheriff's office in Harris County, Texas, was not sufficient to invest the Wyoming court with the power to enter judgments terminating his visitation privileges indefinitely or for money amounts due for unpaid support payments. This

argument also extends to the award in the judgment of attorneys fees and costs of litigation. The father argues that there is no adequate nexus, either in the record or in fact, to justify the exercise of in personam jurisdiction over him. Stated succinctly, his argument is that he entered only a special appearance in Wyoming to contest jurisdiction and he did not waive that appearance by any general appearance in the case.

The district court in an order entered on October 8, 1981, which dealt with various pending motions, made the following finding:

> "1. Defendant's continued requests for affirmative relief, most recently in the motions for 'Vacation of Order to Amend and for Default', continue [sic] an abandonment of special appearance and change his status to that of a general appearance."

We affirm the finding of the district court in this regard. In the first pleadings filed in the district court in Wyoming the father invoked the power of the court by seeking as an alternative to dismissal for want of jurisdiction affirmative action by the Wyoming district court either to enforce the earlier Texas judgment or to recognize the Texas court as a more convenient forum. A special appearance is one limited to challenging the jurisdiction of the court. By invoking the power of the district court to grant affirmative relief, the appellant waived his special appearance and made a general appearance. *Public Service Commission of Wyoming v. Russell*, 51 Wyo. 463, 68 P.2d 597 (1937); *State ex rel. Valles v. Brown*, supra; and *Wagoner v. Saunier*, Okl. 627 P.2d 428 (1981). In addition to the matters mentioned, the appellant, as alluded to by the district court in its finding, subsequently filed a

motion in which he sought vacation of the district court's allowance of the mother's motion to amend and in which he requested the entry of a default judgment against himself so that he could promptly appeal. Furthermore, this court is cognizant of the fact that in July of 1981 the father sought affirmative relief in Wyoming courts by the filing of a Petition for Writ of Habeas Corpus and Writ of Prohibition in this court.

The father is not assisted by his later Notice of Nonparticipation because once a person subjects himself to the jurisdiction of the court by the entry of a general appearance, he cannot withdraw his earlier appearance and escape the jurisdiction of the court. *Weaver Construction Company v. District Court in and for El Paso County, 4th Judicial District*, 190 Colo. 227, 545 P.2d 1042 (1976). We hold that the district court properly exercised personal jurisdiction over the father.

Finally, although embellished with the claim of a deprivation of due process of law, the last argument of the father relates to the sufficiency of the evidence to justify the finding by the district court of a substantial change in circumstances. The father argues that this record does not contain evidence to support the decision of the district court, and because of the district court's order that the hearing held on February 11, 1982, not be reported, this court cannot identify evidence sufficient to support the district court's decision. He also urges the proposition that the brief period between the date of the modification order in Texas and the beginning of the Wyoming proceedings negates the possibility that a change of circumstances occurred in the interim.

Once vested with jurisdiction over the cause, it is the duty of the court to hear evidence to determine whether a substantial material change in circumstances has occurred so that the welfare of the child will be best served by a change in custody. *Blackwell v. Pickett*, Wyo., 490 P.2d 347 (1971); *Elm v. Key*, Wyo., 480 P.2d 104 (1971); *Leitner v. Lonabaugh*, supra; and *Linch v. Harden*, supra. Although the brief period of time between the entry of the order sought to be modified and the institution of new proceedings may indicate that circumstances have not changed, we cannot as a matter of law hold that the movant, who bears the burden of proof, could not present such sufficient evidence. *Blackwell v. Pickett*, supra; *Tanner v. Tanner*, supra; and *Laughton v. Laughton*, 71 Wyo. 506, 259 P.2d 1093, 43 A.L.R.2d 351 (1953). We note, in this regard, that although the Texas court had restored custody to the mother in August of 1981, its order was not entered until some five months later. The record presuades us that many events were occurring after the restoration of custody to the mother, some of which the Texas court took into account, but some of which the district court in Wyoming reasonably would be required to entertain in considering a change in circumstances.

We are not persuaded that the trial court committed an abuse of its discretion in entering the order appealed from after the unreported hearing. This is not a case in which the record is devoid of any evidence or findings by the trial court such as *McVay v. McVay*, 44 Ohio App. 2d 370, 73 Ohio Op. 2d 415, 338 N.E.2d 772 (1974), which is relied upon by the father. The district court in this instance made detailed and explicit

findings concerning the changes in the daughter's circumstances. In addition, the record contains exhibits entered into the record at the unreported hearing which themselves contain evidence, including the depositions of the daughter and the psychologist, both of which support the findings made by the district court. The evidence is sufficient to support a conclusion that the mother has established a stable home with her new husband, and this has greatly aided the daughter's own emotional stability and maturity. The deposition of the psychologist details the advances the daughter has made since treatment was obtained. The daughter is happy and mainifesting significant improvement in her school work and social development under the mother's care and supervision. She has established a strong parent-child relationship with her stepfather. Other improvements in the daughter and the mother's circumstances are detailed in the record. The record in this case is adequate to support the action of the district court.

It does appear that the father's position fails to take into account the prior decisions of this court with respect to modification orders in child-custody proceedings. It is our rule that the decision of the district court will not be disturbed on appeal unless there is an abuse of discretion or the violation of some legal principle. *Gill v. Gill*, Wyo., 363 P.2d 86 (1961); and *Stirrett v. Stirrett*, 35 Wyo. 206, 248 P. 1 (1926). Since we conclude that there is present here neither an abuse of discretion nor the violation of any legal principle, the judgment of the district court must be sustained.

The order of the trial court hereby is affirmed on the basis of the conclusions reached in the foregoing opinion.

APPENDIX A

PARENTAL KIDNAPPING PREVENTION ACT OF 1980

PUB. L. 96-611, 94 STAT. 3569, AS CODIFIED IN 28 U.S.C.A. § 1738A

"(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsection (f) of this section, any child custody determination made consistently with the provisions of this section by a court of another State.

"(b) As used in this section, the term—

"(1) 'child' means a person under the age of eighteen;

"(2) 'contestant' means a person, including a parent, who claims a right to custody or visitation of a child;

"(3) 'custody determination' means a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modifications;

"(4) 'home State' means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

"(5) 'modification' and 'modify' refer to a custody determination which modifies, replaces, supersedes,

or otherwise is made subsequent to, a prior custody determination concerning the same child, whether made by the same court or not;

"(6) 'person acting as a parent' means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

"(7) 'physical custody' means actual possession and control of a child; and

"(8) 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

"(c) A child custody determination made by a court of a State is consistent with the provisions of this section only if—

"(1) such court has jurisdiction under the law of such State; and

"(2) one of the following conditions is met:

"(A) such State (i) is the home State of the child on the date of the comencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

"(B)(i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence

concerning the child's present or future care, protection, training, and personal relationships;

"(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse;

"(D)(i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

"(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

"(d) The jurisdiction of a court of a State which has made a child custody determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

"(e) Before a child custody determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

"(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if—

"(1) it has jurisdiction to make such a child custody determination; and

"(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

"(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination."

NOTE: Legal scholars had anticipated the desirability of legislation such as this. See Bodenheimer, the Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws, 22 Vand.L.Rev. 1207, 1209-1216 (1969); Currie, Full Faith and Credit, Chiefly to Judgments: A Role for Congress, 1964 Sup.Ct. Rev. 89, 115-118; Moran, The Uniform Child Custody Jurisdiction Act: An Analysis of Its History, A Prediction of Its Future, 84 W.Va.L.Rev. 135, 138-141 (1981); Ratner, Child Custody in a Federal System, 62 Mich.L. Rev. 795, 798-807 (1965).

APPENDIX B

IN THE SUPREME COURT
STATE OF WYOMING

October Term, A.D. 1982

NO. 5680

FRED A. QUENZER,
Appellant (Defendant),

v.

NOLA KATHLEEN (QUENZER),
Appellee (Plaintiff).

ORDER DENYING PETITION FOR REHEARING

This matter came on before the Court upon the Petition for Rehearing filed herein on behalf of Appellant and the Court having carefully considered the matter finds that the issues and arguments presented in the Petition for Rehearing were fully considered by the Court in its original disposition of this case; therefore it is

ORDERED that the Petition for Rehearing filed herein be, and the same hereby is, denied.

November 17th, 1982.

BY THE COURT:

/s/ ROBERT R. ROSE, JR.
Robert R. Rose, Jr.
Chief Justice

APPENDIX C

IN THE DISTRICT COURT OF
TETON COUNTY, WYOMING
NINTH JUDICIAL DISTRICT

CIVIL ACTION NO. 4773

NOLA KATHLEEN (QUENZER),
Plaintiff,

v.

FRED A. QUENZER,
Defendant.

(Filed March 2, 1982)

ORDER

This matter came on for hearing before the Court on February 11, 1982. The plaintiff (mother) appeared in person, along with the minor child, Megan Kathleen Quenzer (child); the mother's present husband Jerry Sharrard; her attorneys and her witnesses. The Court had continued the hearing in this case at the defendant (father's) request and neither the father nor his attorneys appeared. This was most distressing to the Court, but having heard the evidence adduced, it is now clear to the Court why the father did not appear. This will become evident upon the reading of this Order.

FINDINGS

The mother and father were divorced in Harris County, Texas on December 22, 1975. The mother was granted

custody of the child who is now 11 years of age, having been born on April 20, 1970.

The divorce decree ordered the father to pay the sum of $300 per month child support.

The property settlement agreement entered into by the father and mother was incorporated in the divorce decree by the Texas Court and it states that the father shall, among other things, pay all medical, dental, psychological, orthodontic expenses and the cost of any prescription drugs for the child when not covered by insurance.

The settlement agreement also states that the father shall pay the mother the sum of $1,000 per month commencing October 1, 1975 through and including April 1, 1987 for alimony regardless of the mother's marital status.

The agreement also provides that the father is to pay all sums incurred by the mother in enforcing the agreement.

Since the divorce, neither the mother nor the child have appeared in the state of Texas with the exception of the child's presence in that state for visitation and two special appearances on the part of the mother. The mother had to make these appearances to obtain custody of the child after the father illegally refused to return the child. Both of these were habeas corpus actions taken by the mother.

The mother and the child have resided in the state of Wyoming in excess of six months prior to the filing of this case with the exception of the child's brief absence from the state of Wyoming for visitation purposes with the father in the state of Texas during the summer of 1980 as mentioned above.

Prior to the mother moving to Wyoming she and the child had lived in Oregon for a period of more than three years, except for two semesters when the mother was teaching among native Americans in Alaska.

During the time that the mother and child resided in Oregon the defendant brought an action in Lincoln County, Oregon for a modification of the Texas divorce decree in which he sought custody of the child. The Oregon court denied the father's request and ordered him to pay all past due child support in the amount of $517.92 and past due alimony in the amount of $23,265 for the period through May 31, 1981. That court also ordered the father to maintain child support payments in the amount of $300 per month and alimony payments in the amount of $1,000 per month which were to be paid to the Department of Human Resources, Support Management Unit, Salem, Oregon.

Records from that agency indicate that the father has willfully disobeyed the Oregon court Order and is in arrears as of September, 1981, in the amount of $66,488.92. No sums have been paid to the mother since September 1, 1981.

The father has made the same allegations as to the mother's conduct and welfare in the Oregon courts; in the Texas courts; in this court and in the Supreme Court of the State of Wyoming.

During the trial in Oregon, both the father and his then wife testified that the mother was rude and vulgar. They were given opportunities to retract that testimony and they refused to do so. A tape recording of the incident involved was introduced which clearly shows that both the father and his present wife lied under oath.

The judgment of the Circuit Court in Oregon was upheld by the Oregon Court of Appeals on October 10, 1979.

During August of 1981, while the father was wrongfully keeping the child in the state of Texas after his visitation had ended, and in violation of the Oregon Order, the mother was forced to commence a habeas corpus action to retain care, custody and control of the child in accordance with the Oregon Order.

During that hearing the father appeared and presented evidence on the issue of whether the circumstances of the child were such as to cause her to be in immediate danger or threat if returned to the mother. It was during this hearing that the child gave testimony conceived by the father, knowing the testimony to be false. Notwithstanding that false testimony, the Court ruled that there was no such emergency and the child was returned to the mother after finding the father had illegally and willfully retained the child. The same Judge heard the habeas corpus action as later heard the action for modification of the custody of the child. It is noted that this Court has talked with the child and finds her to be a lovely young lady. She appears to be well adjusted and she is scared to death to visit with her father because she knows he will "kidnap" her and these are the child's own words.

The child wants to stay with her mother and her stepfather Jerry Sharrard.

On August 15, 1981 the Harris County, Texas court granted care, custody and control of the child to the mother after taking testimony concerning the best interest of the child. The Court's Order itself recognized there

was no immediate danger or threat and that the child had been "illegally confined and retained" by the father.

While verbally ordering a return of the child on August 15, 1980, the Court delayed signing the Order until October 8, 1980. During this time the Court appointed a Houston attorney, Mr. David Gibson, to inquire into the child's circumstances. The attorney personally met with the mother and child together and individually, verified her school attendance, saw the child's home and examined the neighborhood. In late September Gibson reported to the Judge that he was favorably impressed with all his findings and could find no serious or immediate question concerning the welfare of the child. Additionally the Court requested a psychological evaluation and received a positive report from Dr. Elizabeth Hickman of Jackson.

Dr. Hickman testified in this court in the hearing to which this Order addresses itself. In August, 1980 the child was distraught, upset and not child-like. Dr. Hickman confirmed that the child had lied to the Court and to the Judge in Texas after being compelled to do so by the father. The lies came from the father and the father's now wife.

Dr. Hickman confirmed to the Court as did the child, that the child wants to live with her mother and stepfather and it was confirmed to this Court by both Dr. Hickman and the child and from the Court's view of the pictures of the premises as well as the Court taking judicial notice of the home in which the mother and stepfather now live, for the reason that the Court is familiar with this area, that the home is adequate, the child has her own room, there is a guest house, it is comfortable and, in fact, one of the most beautiful places in Jackson

Hole, Wyoming. It is located on Shadow Mountain directly across the river to the east from the Tetons and within short walking distance of the Conrad Schwiering home.

It was confirmed by Dr. Hickman that contrary to the Texas Court Order the father never made himself available to her even though he was required to do so. Once again, the father failed to abide by the Order of the Texas Court. Quite to the contrary the mother and the child were always available and cooperative and have been involved with Dr. Hickman for more than one and one half years. In fact, Dr. Hickman has seen the child on more than 50 occasions and the transformation since the child has not been involved with the father is miraculous. All to the good.

In spite of all this, it is interesting to note that the mother wants the father to visit the child, but she is afraid of what will happen in view of the history of this matter. The Court is also afraid of what might happen as is the child, it being noted that the child is petrified.

There is a strong, positive relationship between the step-father, Jerry Sharrard, and the child and in fact the step-father is, in every emotional sense of the word, the child's father.

The relationship between the mother and child is open and stable.

The Court notes that the Texas Court recognized the Oregon modification Order in the Texas Court letter of appointment of Gibson in the habeas corpus hearing.

Notwithstanding all of the legal proceedings that have gone on in this case, the Court finds, without any problem

whatsoever, that in spite of any and all Orders which may even indicate to the contrary the mother is the proper person to have custody of the child and that circumstances presently before the Court show that any Orders of any court in the past should be modified because of a change in circumstance to give the mother custody of the child.

It is noted that the Petition for Modification of Custody was filed in the Harris County Court on behalf of the father while the father had illegal possession of the child and the father purposely held the child in the state of Texas in an attempt to establish jurisdiction in that state. At the time the Texas Court considered the father's petition on its merits the child's home state was in Wyoming, with the mother, the child was attending school in the state of Wyoming and there was no information about the child in the state of Texas to determine the child's best interest. In fact, all evidence adduced by the Texas Court from Wyoming was supportive of the mother's position.

The transcripts reveal that no new evidence of substance was heard in Texas at the hearing of the petition on its merits and that a substantial portion of said hearing was simply an incorporation of the prior habeas corpus action at which time the same Judge returned the child to the mother finding no serious question of the child's welfare.

The Texas modification suit was not filed until after the father knew the mother had left Alaska and was on her way to Jackson.

At the time instant case was commenced (February, 1981) there was no action pending in any other court. The action commenced by the father in the state of Texas had been concluded on January 26, 1981.

Instant case was filed because of the child's fear concerning her detention during the past summer in Texas, coupled with the fear that her father would use the Texas decree to take her away from her mother.

Instant hearing comes before this Court with the father having appeared and although having requested a continuance and having been urged to appear by this Court, having failed to do so and asking for general relief in many forms, such as, enforcement of the Texas Modification Order; for a stay in proceedings; for dismissal of this action; continuances and orders not to remove the child from Teton County, etcetera.

This Court has considered all prior transcripts and custody proceedings, including that of the Texas Court, even though it may not be required to do so.

This Court, as mentioned above, finds that there is sufficient change in circumstances to modify custody in the mother's favor notwithstanding any prior proceedings.

As stated above, the illegal detention of the child by the father has caused the child to suffer severe emotional stress, particularly with respect to continuing litigation regarding her custody and most specifically, including, without being limited to, having been instructed by her father how to insult and lie about her mother under oath before the Courts.

The mother has had custody of the child since 1975. The mother and the step-father, Jerry Sharrard, have provided the child with a good home; a good education, in a good, warm loving atmosphere.

The child is receiving excellent care in Wyoming; she has been able to recover from the psychological trauma

of being subjected to continuous litigation and constant conflict about her care and custody caused by the father. Particularly evident is the maturation of the child and her emotional stability since February, 1981.

It is also interesting to note that the child has made numerous attempts to contact her father, but they have been unsuccessful and the father has not even attempted to contact his child since May, 1981.

If the father is allowed to visit the child without meaningful safeguards, it is probable that the child would undergo further emotional stress harming her health and welfare.

It is noted that the mother is a very intelligent lady who has always let the father know where she and the child could be located and her actions have only been in defense of her rights and that of her child.

The plaintiff has incurred attorney fees and costs in this matter in the sum of $17,103.77 all of which was substantiated by expert testimony.

IT IS ORDERED, that this Court has personal and subject matter jurisdiction to hear this case.

IT IS FURTHER ORDERED, that the state of Texas did not have jurisdiction to hear the modification under a statute substantially similar to Wyoming law or jurisdictional standards and facts similar to Wyoming law, which may be irrelevant in any event because the Texas action was not pending at the time this court took jurisdiction.

IT IS FURTHER ORDERED, that the child's home state under standards, facts and laws substantially similar to Wyoming and Oregon was not Texas, but rather Wyoming.

IT IS FURTHER ORDERED, that there is sufficient evidence in the state of Texas to determine the child's best interest.

IT IS FURTHER ORDERED, that this Court refuses to recognize the Texas Modification Order as requested by the father, as said Order was obtained as the result of the father's illegal confinement and detention of the child within the state of Texas after the period of visitation had ended and in violation of the Oregon Modification Order.

This Court has jurisdiction as no other court now has jurisdiction, nor did any court have jurisdiction at the time this case was filed so as to cause this court to have to consider full faith and credit under the Uniform Child's Jurisdiction Act or Federal Law.

IT IS FURTHER ORDERED, that the child's circumstances have substantially changed since the time of the Texas Modification Order and the best interest of the child would be served by maintaining the child's permanent custody with the mother and the father not being permitted any visitation at the present time unless substantial safeguards are erected in that regard.

IT IS FURTHER ORDERED, that the father shall pay to the mother the sum of $3,600 in past due child support, plus the sum of $3,004.39 for medical expenses of the child.

IT IS FURTHER ORDERED, that the father shall pay $300 per month each and every month plus costs and expense of any medical care over $10 for the child. All payments shall be made prior to the first day of each month to the Clerk of this Court, Ninth Judicial District, P. O. Box 1727, Jackson, Wyoming 83001.

IT IS FURTHER ORDERED, that the father shall pay to the mother the sum of $68,088.92 in past due spousal support plus all sums as they shall become due pursuant to the property settlement agreement entered into by the parties and upon Order of the Texas courts.

IT IS FURTHER ORDERED, that the father shall pay to the mother the sum of $17,103.77 for attorney fees and costs of litigation in this matter. Pursuant to the property settlement agreement and § 20-5-116 W.S.

IT IS FURTHER ORDERED, that all payments due hereunder shall be subject to 10% interest according to law.

Dated February 22, 1982.

/s/ ROBERT B. RANCK,
Robert B. Ranck, District Judge

APPENDIX D

IN THE DISTRICT COURT OF
309th JUDICIAL DISTRICT
HARRIS COUNTY, TEXAS

NO. 1,035,983-A

IN THE MATTER OF THE MARRIAGE OF
FRED AUGUST QUENZER, JR., and
NOLA KATHLEEN QUENZER

AND IN THE INTEREST OF
MEGAN KATHLEEN QUENZER, a Child

ORDER OF MODIFICATION IN SUIT
AFFECTING PARENT-CHILD RELATIONSHIP

Be it remembered that on the 12th day of January, 1981, came on to be heard the Motion to Modify in Suit Affecting Parent-Child Relationship as filed by FRED AUGUST QUENZER, JR., Movant herein. Movant appeared in person and by his attorney, Morley H. White. Respondent, NOLA KATHLEEN, appeared by and through her attorney, James Gerson. The order to be modified is entitled "Decree of Divorce" and is dated the 22nd day of December, 1975 and as later modified on July 7, 1978. The Decree of Divorce was modified by the Circuit Court of the State of Oregon, for the County of Lincoln in Cause No. 38791 wherein FRED AUGUST QUENZER was Petitioner and NOLA KATHLEEN QUENZER, a/k/a NOLA KATHLEEN was Respondent.

Respondent filed a Special Appearance. The Court having considered the pleadings, testimony of record, and all other relevant matters found it had jurisdiction and denied the Special Appearance. The Court further finds

that at the time of the commencement of this suit, NOLA KATHLEEN was not a continuous domiciliary or resident of any state for six months preceeding the filing of this action; that MEGEN KATHLEEN QUENZER was born on April 20, 1970 in Houston, Harris County, Texas; that the parties, NOLA KATHLEEN and FRED AUGUST QUENZER were granted a divorce in Houston, Harris County, Texas on the 22nd day of December, 1975 under cause number 1,035,983 as filed in the Court of Domestic Relations Number Two, Harris County, Texas captioned "In the matter of the marriage of: FRED AUGUST QUENZER, JR. and NOLA KATHLEEN QUENZER and in the interest of MEGEN ELIZABETH QUENZER;" that Texas was the last matrimonial Domicile of NOLA KATHLEEN and FRED AUGUST QUENZER; that NOLA KATHLEEN has been a transient for at least two years proceeding the filing of this cause; that no other court had or has continuing jurisdiction of this suit or of the child, MEGEN KATHLEEN QUENZER, the subject of this suit. The Court finds it has jurisdiction of the child MEGAN KATHLEEN QUENZER, and that this Court is the most convenient forum to determine the best interest of the child MEGEN KATHLEEN QUENZER.

The Court, having examined the pleadings and heard the evidence and argument of counsel, finds that it has jurisdiction of this cause and of all the parties. A jury was waived, and all matters in controversy, including questions of fact and of law, were submitted to the Court. All persons entitled to citation were properly cited. The Court finds that the material allegations contained in Movant's Motion of Modification are true and the following orders are in the best interest of the child:

Since entry of the original Order by this Court and again after the hearing in Oregon, the circumstances of the child have so materially and substantially changed that retention of NOLA KATHLEEN, the present Managing Conservator, would be injurious to the welfare of MEGAN KATHLEEN QUENZER; FRED AUGUST QUENZER, JR. should be appointed Managing Conservator and such appointment would be a positive improvement for, and in the best interest of, such child.

The Court finds that the following child is the subject of this suit:

Name: MEGAN KATHLEEN QUENZER

Birthplace: Houston, Texas Sex: Female

Birth Date: 4/20/70

The Court further finds that at the time of filing of the above numbered and styled cause, MEGAN KATHLEEN QUENZER was physically present in Texas.

It is further ORDERED, ADJUDGED and DECREED that the prior testimony of MEGAN KATHLEEN QUENZER be and is hereby made a part of the record in this cause.

It is ORDERED, ADJUDGED and DECREED that NOLA KATHLEEN be removed as permanent Managing Conservator; that FRED AUGUST QUENZER, JR. be and is hereby appointed permanent Managing Conservator of the child, MEGAN KATHLEEN QUENZER; and that all prior orders for the support of such child are superseded by this order.

It is ORDERED, ADJUDGED and DECREED that NOLA KATHLEEN transfer possession of the child,

MEGAN KATHLEEN QUENZER, to FRED AUGUST QUENZER, JR. on January 26, 1981 and that subsequent possession be determined as herein specified.

It is ORDERED, ADJUDGED and DECREED that the Managing Conservator shall have all rights, privileges, duties and powers of a parent to the exclusion of the other parent, subject to the rights, privileges, duties, and powers granted to any Possessory Conservator named in this Decree.

It is ORDERED, ADJUDGED and DECREED that NOLA KATHLEEN be and is hereby appointed Possessory Conservator of the child, MEGAN KATHLEEN QUENZER.

It is ORERED, ADJUDGED and DECREED that NOLA KATHLEEN, as Possessory Conservator, shall have possession and access to the child as follows:

1. During the second weekend of each month, in Harris County, Texas, with the period of possession being from ten o'clock a.m. to six o'clock p.m. on Saturday and two o'clock p.m. to six o'clock p.m. on Sunday with the child to be promptly returned to the QUENZER residence in Harris County, Texas;

2. During even numbered years beginning in 1982 and every even numbered year thereafter, for a period beginning on the first day of the child's Christmas school vacation and ending no later than ten o'clock p.m. on December 26 of such even numbered year;

3. For a period of 30 days during the summer school vacation;

4. At all other reasonable times that may be agreed upon by the parties in writing.

Respondent shall give Movant thirty days written notice, by certified or registered mail, Return Receipt Requested, of any summer visitation she intends to exercise and her failure to give such notice shall be deemed a waiver of summer's visitation.

Respondent will be required to post a $2,000.00 bond with the Court prior to any visitation. Said bond shall be returned to Respondent upon her timely surrender of the child to the Managing Conservator. If the child is not timely returned then the bond shall be paid over to FRED AUGUST QUENZER, JR. upon proper order of this Court.

It is ORDERED, ADJUDGED and DECREED that NOLA KATHLEEN shall bear the cost of the child's travel expenses from the Managing Conservator's Texas residence to the Possessory Conservator's residence and FRED AUGUST QUENZER, JR. shall bear the cost of the travel expenses for the child's return with such travel expense to be limited to the cost of travel from the Managing Conservator's Texas residence to the Possessory Conservator's residence incurred by the Possessory Conservator. Each party shall bear his or her cost of transportation which shall be fully paid by both parties thirty days prior to the exercise of said summer or Christmas visitation. Said splitting of costs is limited to the thirty day summer visitation and the even numbered Christmas visitation. All other visitation shall be solely at the expense of NOLA KATHLEEN.

It is ORDERED, ADJUDGED and DECREED that the Possessory Conservator shall have the following rights, privileges, duties, and powers during the period of possession:

1. the duty of care, control, protection and reasonable discipline of the child;

2. the duty to provide the child with clothing, food and shelter; and

3. the power to consent to medical and surgical treatment during an emergency involving an immediate danger to the health and safety of the child.

It is ORDERED, ADJUDGED and DECREED that all prior child support payments due NOLA KATHLEEN from FRED AUGUST QUENZER, JR. as ordered by the Oregon Court, referenced above and by this Court, are from this date forward no longer imposed upon FRED AUGUST QUENZER, JR., with all support payments as of this date as follows: NOLA KATHLEEN shall pay to MEGAN KATHLEEN QUENZER child support in the amount of $25.00 per month, with the first payment being due and payable on the 1st day of February, 1981, and a like payment being due and payable on the same day of each month thereafter until the child reaches the age of 18. All payments shall be made through the Harris County Child Support Division, 1115 Congress, Houston, Harris County, Texas 77002 and thereafter promptly remitted to the Managing Conservator for the support of the child, MEGAN KATHLEEN QUENZER. On or before January 1st of each year, NOLA KATHLEEN shall pay a $12.00 administrative fee to the Harris County Child Support Division.

It is ORDERED, ADJUDGED and DECREED that NOLA KATHLEEN and FRED AUGUST QUENZER, JR. shall make any change of their current telephone number and current addresses available to the other and this court within ten days from any change of address

by either party so that the child may be in contact with each of her parents. The address of FRED AUGUST QUENZER, JR. shall be within the next thirty days changed from 3504 Creekbend Drive, Baytown, Texas 77521 to P. O. Box 7091, Bay Plaza Station, Baytown, Texas 77520.

Any relief not specifically granted is hereby denied.

All costs of court in this cause are adjudged against the party by whom incurred, all of for which let execution issue.

SIGNED and ENTERED this 21st day of January, 1981.

/s/ ALVIN ZIMMERMAN
Honorable Alvin Zimmerman

APPROVED:

/s/ MORLEY H. WHITE
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